

ALERT

FTC Sends Additional Warnings About Unsubstantiated Coronavirus Claims

April 24, 2020

On April 23, 2020, the Federal Trade Commission (FTC) announced that it had sent 21 warning letters to a wide range of marketers, ordering them to stop making claims that their products can treat or prevent coronavirus (COVID-19). In the letters, the agency points to a range of products that it identifies as being promoted with unsubstantiated COVID-19 treatment claims. These include vitamins, supplements, and other similar products, as well as IV therapy, ozone therapy, and stem cell treatments.

This follows two previous rounds of warning letters to marketers making COVID-19-related claims, covering products such as colloidal silver, teas, essential oils, and personal cleaning products. As we noted when the first round of letters was sent, claims to be able to treat the novel coronavirus implicate both the FTC Act and the Food, Drug, and Cosmetic Act, enforced by the U.S. Food and Drug Administration (FDA). The FTC also sent an additional round of COVID-related warning letters to multi-level marketing companies today. The FTC warning letters also track parallel efforts by state Attorneys General to scrutinize COVID-related claims.

The FTC's warning letters state that the recipients do not have substantiation for claims that their products can help treat or prevent COVID-19. The letters advise the recipients they "cannot advertise that a product can prevent, treat, or cure human disease unless you possess competent and reliable scientific evidence, including, when appropriate, well-controlled human clinical studies, substantiating that the claims are true at the time they are made."

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The FTC's speed in issuing these warning letters – and the fact that it continues to widely publicize the names of recipients – is an indication that the FTC is actively monitoring online marketplaces for any claims that may relate to coronavirus or COVID-19. The letters are also a reminder to companies that are selling or marketing products that claim about the efficacy of the marketed products must be substantiated and cannot be deceptive. This would encompass a range of products, including supplements, products designed for medical treatment or protection (such as face masks), cleaning products, and therapeutic treatments.

On a parallel track, state Attorneys General have also actively monitored COVID-related claims, issuing cease and desist letters, consumer guidance documents, and numerous consumer alerts warning of potential false advertising. Significantly, state Attorneys General have not only sought to police consumer protection scams by warning consumers and purveyors of products; they have also strongly urged the largest e-commerce platforms to institute consumer protections related to COVID-19 price-gouging.

These sweeping actions taken by state Attorneys General, and the recent string of FTC letters reinforce the possibility of quick enforcement action in response to the COVID-19 pandemic. Last week, the FTC filed suit against a company that claimed to be a Small Business Administration (SBA)-approved lender for providing coronavirus-related relief, just a week after the company received a cease-and-desist letter from the SBA. The FTC has also sent warning letters to VoIP providers about COVID-19-related robocall scams, based on active monitoring of consumer complaints. And just this week, the FTC settled a case with a payment processor that alleged that the payment processor knowingly facilitated fraudulent conduct – which, while unrelated to COVID, shows the extent of the agency's investigation and enforcement scope.

Wiley's FTC Regulation practice advises companies on advertising and marketing laws and claim substantiation, and represents clients in inquiries from both federal and state regulators. Please contact one of the authors for further information. We will also be hosting a webinar on Thursday, April 30, on "What You and Your Company Need to Know about the Laws and Regulations Governing Disinfectants and Devices Claiming to Be Effective Against the Novel Coronavirus."

Visit our COVID-19 Resource Center